

ALICE W. CLARKE.

FEBRUARY 29, 1904.—Ordered to be printed.

Mr. ALGER, from the Committee on Pensions, submitted the following

REPORT.

[To accompany H. R. 9037.]

The Committee on Pensions, to whom was referred the bill (H. R. 9037) granting a pension to Alice W. Clarke, have examined the same and report:

The report of the Committee on Invalid Pensions of the House of Representatives, hereto appended, is adopted and the passage of the bill is recommended.

The House report is as follows:

Wright E. Clarke, the soldier named in this bill, served under his correct name of Seymour T. Montgomery (having subsequently been known as Wright E. Clarke) as private and sergeant of Company I, and as hospital steward of the Twentieth Indiana Infantry, from July 1, 1861, to October 19, 1864, when honorably discharged.

He never applied for pension, and died May 22, 1896.

Alice W. Clarke, the beneficiary named in this bill, and now 53 years of age, applied for pension under the act of June 27, 1890. Her claim, however, was rejected in March, 1903, upon the ground that a legal marriage between herself and the soldier could not be accepted as having been established prior to the passage of the act of June 27, 1890, hence title to pension under said act could not obtain.

The case was specially examined, and evidence obtained upon such special examination shows that the beneficiary was married to the soldier on August 13, 1873, in conformity with the laws of the State of Ohio, and that they thereafter lived together continuously as husband and wife until the death of the soldier, which occurred in Michigan on May 22, 1896; that there was no bar to a legal union on the part of the beneficiary; that the soldier, however, had been previously married in Indiana, on July 20, 1856, as shown by record evidence, to one Elizabeth Sipe, with whom he lived until 1872, when he deserted her, and that his first wife did not die until January 28, 1876, subsequent to the date when the soldier intermarried with the beneficiary; that no divorce was obtained either by the soldier or his first wife.

The beneficiary testified that before she was married to the soldier he had informed her that he had been previously married and that his wife and three children had died from scarlet fever; that she never knew that the soldier's first wife was not dead at the time she was married to him until a year or two before the soldier died.

The soldier in his last will and testament recognized the beneficiary as his wife and appointed her his executrix. It appears that a contest was made against the probate of this will by the children of the first marriage, but it is shown that the will was admitted to probate on September 6, 1896, and that administration of the estate was granted to the beneficiary as his wife.

The Pension Bureau held that the marriage of the beneficiary to the soldier in 1873 was null and void under these circumstances, and that a lawful marriage could not be considered as having arisen or to have taken place between the beneficiary and the soldier until a year before his death, when the beneficiary had the first intimation that the soldier's first wife had not died at the time when she married him in 1873.

Proof filed in the Pension Bureau shows that the beneficiary is dependent upon her own exertions, having no property other than an equity in the estate of her deceased husband, and that her equity will not exceed \$500.

The beneficiary has not remarried since the soldier's death.

The soldier died of paralysis.

The beneficiary having been the wife in fact of the soldier from the time of her marriage to him in 1873 up to the time of his death in 1896, and having entered into a marriage relation with the soldier in good faith, she should now be recognized as the widow of the soldier and be granted the relief given under the act of June 27, 1890, to soldiers' widows, namely \$8 per month.

The passage of the bill is therefore recommended.

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